plevin, executed a statutory redelivery bond and retained possession of the property. Through no fault of the defendant the property was destroyed by fire. The court then found the issues in the replevin suit for the plaintiff. *Held*, that the plaintiff is entitled to the full value of the property. *Bradley* v. *Campbell*, 111 S. W. 514 (Mo.).

The weight of authority supports this decision. *Hinkson* v. *Morison*, 47 Iowa 167; *George* v. *Hewlette*, 12 So. 855 (Miss.). *Contra*, *Pope* v. *Jenkins*, 30 Mo. 528. Opposing decisions are based on the rule that if the condition of a bond becomes impossible of performance by act of God, the penalty is saved. The application of this rule to a case like the present is specious, for it makes no distinction between the liability of a wrongdoer and that of a mere bailee. It is just that a bailee should be excused by the accidental destruction of the subject matter of the bailment. *U. S.* v. *Thomas*, 15 Wall. (U. S.) 337. But where there is a precedent wrong, and the obligor's liability does not rest wholly upon the contract, he should bear the loss of the property. The defendant in the principal case was a wrongdoer, for he was holding the plaintiff's property against the latter's will. He should not be allowed to keep such property at the owner's risk, for he has deprived him of the opportunity of disposing of it pending the litigation.

TAXATION — WHERE PROPERTY MAY BE TAXED — OPEN ACCOUNTS TAXED AT DEBTOR'S DOMICILE. — A Connecticut insurance company conducted business in Louisiana through an agent. The company extended no credit to its customers, but on delivery of each policy a debt arose from the agent to the company for the amount of the premium. *Held*, that the debt is taxable in Louisiana. *National Fire Ins. Co.* v. *Board of Assessors*, 46 So. 117 (La.).

This case is contrary to many early decisions in Louisiana, but follows the more recent trend of judicial decision in that state, and in others, to tax debts and *choses in action* at the domicile of the debtor. The court, by this decision, extends the doctrine for the first time in Louisiana to open accounts not represented by some tangible document. For a discussion of the principles involved, see 15 HARV. L. REV. 680; 20 *ibid.* 656.

TENANCY IN COMMON — PURCHASE BY ONE TENANT AT FORECLOSURE SALE OF COMMON PROPERTY. — After the death of a mortgagor of land the property was purchased by one of the heirs at the foreclosure sale. *Held*, that he holds the title free from any trust in favor of his co-heirs. *Jackson* v. *Baird*, 61 S. E. 632 (N. C.).

The case is opposed by virtually all American authority. *Savage* v. *Bradley*, 149 Ala. 169; *Moy* v. *Moy*, 89 Iowa 511. But on principle the decision seems unassailable. It is, indeed, established law in the United States that co-tenants stand in a fiduciary relation to one another, and that the purchase by one co-tenant of an encumbrance on the common estate inures to the benefit of all who elect to contribute their shares of the purchase price. *Van Horne* v. *Fonda*, 5 Johns. Ch. (N. Y.) 388. The basis of the doctrine is that it is inequitable for one co-tenant to obtain a title adverse to his fellows. In the principal case, however, the co-tenancy itself has ceased through the sale, and each has an equal chance to buy back. *Sutton* v. *Jenkins*, *supra*. And the case is clearly distinguishable from repurchase by a co-tenant at a tax sale, which revives the co-tenancy, on the general ground that purchase by any one under a legal duty to discharge the obligation to the state operates as a simple payment of the tax. *Delashmutt* v. *Parrent*, 39 Kan. 548. The English doctrine that there is no fiduciary relation between co-tenants seems preferable. *Kennedy* v. *de Trafford*, [1897] A. C. 180. See 9 HARV. L. REV. 427.

TORTS — LIABILITY OF A COUNTY — INJURY TO PROPERTY RIGHTS. — A county employee, while repairing a road, negligently diverted a watercourse which destroyed the plaintiff's house. *Held*, that the county is liable. *Matsumura* v. *County of Hawaii*, 19 Haw. 18. See NOTES, p. 54.

VENDOR AND PURCHASER — REMEDIES OF PURCHASER — VENDEE'S LIEN AFTER RESCISSION. — After paying part of the purchase price on an executory

contract for the sale of land, the vendee sued for a rescission on the ground of fraud, and in the same action sued to recover the money paid and to establish and foreclose a lien on the land therefor. *Held*, that though the plaintiff is entitled to a rescission and the return of the money, the lien is lost by the rescission. *Davis* v. *Rosenzweig Realty Co.*, 192 N. Y. 128.

A vendee is generally allowed an equitable lien for money paid under an executory contract for the purchase of land. *Elterman* v. *Hyman*, 192 N. Y. 113; see 9 HARV. L. REV. 486. This lien is based, not on the contract, but, as in the case of a vendor's lien after conveyance, on the necessity of doing justice as between vendor and purchaser in the relation created by the contract. *Whitbread & Co., Ltd.* v. *Watt*, [1902] 1 Ch. 835. And since the lien affords to the vendee security for the purchase money paid before conveyance, the analogy to an equitable mortgagee's lien is very close. *Rose* v. *Watson*, 10 H. L. Cas. 672. The mere fact of rescission clearly does not destroy the equitable basis of this vendee's lien. Accordingly, the English and some American courts have definitely held that such a lien survives rescission. *Whitbread & Co., Ltd.* v. *Watt*, *supra*; *Galbraith* v. *Reeves*, 82 Tex. 357. Furthermore, as the very fact of suing to foreclose the lien would seem to constitute an election to rescind the contract, the many American courts which allow such suits after the vendor has failed to make a good title, apparently accept that doctrine. *Occidental Realty Co.*, v. *Palmer*, 117 N. Y. App. Div. 505. The present case would therefore, both on principle and authority, seem unsound.

WAGERING CONTRACTS — RECOVERY OF MONEY LENT FOR GAMBLING. — The plaintiff lent money to the defendant's testator knowing that it might be used in gambling. The money was lent and so used in a jurisdiction where gambling was not illegal. *Held*, that the plaintiff may recover. *Saxby* v. *Fulton*, 24 T. L. R. 856 (Eng., K. B. D., July 27, 1908).

The English courts hold that the fact that money is lent for the express purpose of gambling will not defeat recovery if the contract is made and the money so used in a jurisdiction where gambling is not illegal. *Quarrier* v. *Colston*, 1 Phil. 147. The weight of American authority follows this doctrine. *Ward* v. *Vosburgh*, 31 Fed. 12. Opposing jurisdictions maintain that comity does not require a state to enforce contracts conflicting with its own conception of public policy. *Pope* v. *Hanke*, 155 Ill. 617. Conceding the soundness of the minority doctrine, the present holding would still seem correct, for the case must be distinguished from one wherein the loan is for the express purpose of gambling in a state where that practice is illegal. Money so lent cannot be recovered. *McKinnell* v. *Robinson*, 3 M. & W. 434; *Tyler* v. *Carlisle*, 79 Me. 210. But where the money is placed at the absolute disposal of the borrower, as in the principal case, the mere knowledge of the lender of the other's intention to use it in illegal gaming does not so render him *particeps criminis* as to defeat recovery. *Jackson* v. *Bank of Goshen*, 125 Ind. 347.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

EQUITABLE JURISDICTION OF NUISANCE. — In most of the United States it has been held that upon a bill to abate a nuisance, when the plaintiff's right or the defendant's wrong is disputed and doubtful, a permanent injunction will not issue unless the plaintiff has first obtained a judgment at law.[1] Whether or

[1] See 5 Pomeroy Eq. Jur., §§ 519 *et seq.* In England, New York, and California the statutes regulating procedure are construed to have abolished the rule. Roskell *v.* Whitworth, L. R. 5 Ch. 459; Corning *v.* Troy Factory, 40 N. Y. 191; Lux *v.* Haggin, 69 Cal. 255, 284.